

ARTICLE 16 LAND USES

490-2100 Purpose

This article promotes the public health, safety, and welfare and is intended to promote a sound development pattern by regulating the use of land in the City.

490-2101 State and federal preemption

While the City has broad authority to create and enforce its own zoning regulations, that authority is sometimes limited by state and federal laws, and related court rulings, which take precedence over local regulations. In some cases, these higher levels of government impose specific rules that municipalities must follow, or they restrict local authority altogether—a concept known as preemption.

Certain land uses are subject to this kind of preemptive control. For example, adult entertainment businesses are protected by the First Amendment, which limits how and where municipalities can regulate them. Group homes and other community living arrangements are often shielded by federal fair housing laws and state statutes that prohibit discriminatory zoning practices against people with disabilities. The placement and regulation of telecommunication facilities, such as cell towers, are governed by the federal Telecommunications Act of 1996, which prevents local governments from unreasonably restricting their development. Likewise, state laws prevent municipalities from creating overly burdensome regulations on solar and wind energy systems.

In all such cases, the City must carefully navigate the balance between achieving local planning objectives and complying with overriding state and federal legal standards.

490-2102 Land uses allowed in base zoning districts

A use table, included as Appendix A, graphically shows what land uses are allowed in the various base zoning districts, as follows:

- (1) "P" indicates that the use is permitted in the zoning district by right provided all other provisions of the zoning code are met.
- (2) "C" indicates that the use is allowed in the zoning district with approval as a conditional use provided all other provisions of the zoning code are met subject to the special review standards and procedures for conditional uses outlined in Article 5.
- (3) "TFR" indicates that the use is subject to the special review standards and procedures for wireless telecommunication facilities outlined in Article 5.
- (4) "WES" indicates that the use is subject to the special review standards and procedures for wind energy systems outlined in Article 5.

In addition, the last column of the use table shows what if any additional reviews are needed as follows:

- (1) "AR" indicates that the land use must comply with the special architectural standards in Article 20 as applicable.
- (2) "SP" indicates that the land use must comply with the site design standards in Article 21 as applicable.
- (3) "ZP" indicates that the use is allowed in the zoning district with issuance of a zoning permit.

These reviews are required if the use is permitted by right or with a discretionary review.

Land uses are described in Appendix B and may include additional use-specific standards for vehicle parking, bicycle parking, loading, and supplemental standards.

490-2103 Land uses allowed in planned development districts

Land uses that are permitted in a planned development district are specified in Article 9, along with any use-specific development standards.

490-2104 Land uses not listed

If a person wants to establish a land use that is not specifically listed in the zoning code, they may submit an application to the zoning administrator if they believe the proposed use is closely similar to a listed use. The application will be evaluated consistent with requirements in § 490- . If the zoning administrator determines that the proposed use is indeed closely similar to a listed use, it will be regulated in the same manner, including compliance with all applicable supplemental standards.

Any land use that is not specifically listed and cannot reasonably be interpreted as closely similar to a listed use is considered prohibited. However, if someone wants to establish such a use, they may submit a petition to amend the zoning code, following the procedures and requirements outlined in Article 5.

490-2105 Mixed uses in a building

A building may include more than one permitted land use, even if the uses are not part of a defined mixed-use category, if each use is allowed in the base zoning district for the property. For example, a multi-tenant building could include a restaurant, a retail shop, and a health clinic if these uses are permitted in the base zoning district. Each use will be regulated by all applicable supplemental standards, respectively. In the case that a building includes both a residential and a non-residential use, the supplemental standards for mixed-use residential will also apply.

490-2106 Special provisions for specified foster homes and treatment foster homes

Foster homes that are owned, operated, or contracted for by the state of Wisconsin or a county department are not subject to this article.^[1] All other foster homes and treatment foster homes must comply with this article.

Editorial notes:

[1] See 63 Atty. Gen. 34

490-2107 Special provisions for community living arrangements

- A. Limitations.** Under state law, a city may not limit the number of community living arrangements so long as the total capacity of such facilities does not exceed 25 or one percent of the City's population, whichever is greater. When that threshold is exceeded, the Common Council may prohibit additional community living arrangements from being located in the city. Additionally, when the capacity of community living arrangements in a ward reaches 25 or one percent of the population, whichever is greater, the Common Council may prohibit additional community living arrangements from being located in the ward. A foster home or a foster treatment home that is the primary domicile of a foster parent or foster treatment parent and that is licensed under § 48.62, Wis. Stats., and an adult family home certified under § 50.032 (1m)(b), Wis. Stats., are exempt from this provision.^[1]
- B. Periodic review of existing facilities.** Not less than 11 months but not more than 13 months after the first licensure of an adult family home under § 50.033, Wis. Stats., or of a community living arrangement and every year thereafter, the Common Council may make a determination as to the effect of such facility on the health, safety, or welfare of residents of the municipality. If the Common Council determines such facility poses a threat to the health, safety, or welfare of the residents of the municipality, the Common Council may order such facility to cease operation or obtain a conditional use permit to continue operation. Such facility must cease operation within

90 days after date of the order, or the date of final judicial review of the order, or the date of the denial of a conditional use permit, whichever is later. The fact that an individual with acquired immunodeficiency syndrome or a positive HIV test, as defined in § 252.01 (2M), Wis. Stats., resides in a community living arrangement with a capacity of 8 or fewer persons may not be used under this subsection to assert or prove that the existence of the community living arrangement in the community poses a threat to the health, safety, or welfare of the residents of the City.^[1]

Editorial notes:

[1] See § 62.23 (7)(i), Wis. Stats.

490-2108 Accessory land uses

- A. Generally.** An accessory building may not be constructed until the principal building is completed or is under construction.
- B. Removal of a principal building while retaining an accessory building.** Pursuant to the procedures and requirements in Article 5, the Plan Commission may approve a special exception to allow the removal of a principal building, while retaining the accessory building, when the commission determines that the principal building is dilapidated, and the accessory building meets current building codes and serves a useful purpose. If the commission approves the special exception, the property owner must record a deed restriction, as approved by the commission, in the Ozaukee County register of deeds office that controls the use of the accessory building and incorporates any requirement imposed by the commission as a condition of approval, such as time limitations (e.g., construction of a principal building) or limitations on the use of the building. (verify with staff)

490-2109 Temporary uses

By definition, a temporary use is not permanent. This means that once a temporary use has been removed, it does not retain any vested right to be reestablished in the future. Additionally, the City has the authority to remove a temporary use from the zoning code, change the locations where it is allowed, and create new supplemental standards or modify existing ones that were previously in effect. (verify with staff)

490-2110 Effect of overlay districts on land uses

Even if a land use is permitted in a base zoning district, an overlay district may impose additional restrictions that further limit which land uses are allowed on a property.

490-2111 Map of conditional uses

The zoning administrator is authorized to prepare a map showing those properties that have an active conditional use permit and to amend the same from time to time.

490-2112 Nonconforming uses

A land use that was legally established but does not comply with the current requirements is considered a nonconforming use and is therefore subject to the terms and conditions in Article 26 as applicable.

490-2113 through 490-2199 reserved